

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 943 Preemption of Local Government Wage Mandates

**SPONSOR(S):** Harding

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee		Leshko	Miller
2) Regulatory Reform Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority. However, some local government authority may be preempted by the state, preventing local governments from exercising authority in certain areas and requiring local ordinances be compliant with state statute or the state constitution. A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.

In 2003, the Legislature preempted the establishment of minimum wage to the state. However, local governments retained some authority to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for a few categories of employees. The law also contains an exception for situations where compliance with the law would prevent a political subdivision from receiving federal funds. Additionally, political subdivisions are prohibited from requiring an employer to provide employment benefits not required by state or federal law.

The bill provides a substantial revision to s. 218.077, F.S., in order to address local variations in minimum wage mandates that impact economic stability and growth. The bill provides new definitions for the following terms: "employ," "employee," "employer," "political subdivision," and "wage mandate." The term "employer" now explicitly includes "employers that have contracts or subcontracts with a political subdivision or that have received tax abatements, loan guarantees, or other financial assistance from a political subdivision," which were previously a category of employers and employees that were exempt from state preemption of minimum wage ordinances. "Wage mandate" is a new term added, defined as "any requirement enacted by a political subdivision which requires an employer to pay any or all of its employees a wage rate not otherwise required under state or federal law."

The bill prohibits political subdivisions from enacting, maintaining, or enforcing any wage mandates in an amount greater than the state minimum wage rate calculated pursuant to s. 24(c), art. X of the Florida Constitution, and provides that any wage mandates in conflict with the state minimum wage are void.

The bill further provides an exception, allowing political subdivisions to enact, maintain, or enforce minimum wage requirements or other benefits included in a collective bargaining agreement for employees of the political subdivision. Additionally, there is an exception if federal law requires the payment of a prevailing minimum wage to persons working on projects funded in whole or in part by federal funds.

The bill is not projected to have a fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Home Rule

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general law or special law.<sup>1</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the electors.<sup>2</sup> Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.<sup>3</sup>

##### Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute. A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.<sup>4</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>5</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>6</sup>

Implied preemption is a legal doctrine that addresses situations in which the Legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.<sup>7</sup>

In cases determining the validity of ordinances enacted in the face of state preemption, such ordinances are found null and void.<sup>8</sup>

##### Local Wage Ordinances in Florida

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<sup>1</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>2</sup> Art. VIII, s. 1(g), Fla. Const.; See also s. 125.01, F.S.

<sup>3</sup> Art VIII, s. 2(b); See also s. 166.021(1), F.S.

<sup>4</sup> James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Jan. 18, 2022).

<sup>5</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

<sup>6</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>7</sup> Wolf and Bolinder, *supra*.

<sup>8</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

In 2003, the Legislature preempted the establishment of minimum wages to the state.<sup>9</sup> However, a political subdivision<sup>10</sup> retains the authority to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for:

- Its employees;
- The employees of an employer contracting to provide goods or services for the political subdivision, or the employees of a subcontractor of such an employer; or
- The employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.<sup>11</sup>

The law also provides an exception for domestic violence or sexual abuse ordinances, orders, rules, or policies adopted by a political subdivision.<sup>12</sup>

The law contains an exception for situations where compliance with the law would prevent a political subdivision from receiving federal funds. This allows compliance with the Davis-Bacon and related acts,<sup>13</sup> which direct the Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of federal funds.<sup>14</sup>

Additionally, political subdivisions are prohibited from requiring an employer to provide employment benefits<sup>15</sup> not required by state or federal law.<sup>16</sup>

### **Effect of Proposed Changes**

The bill substantially revises s. 218.077, F.S., in order to address local variations in minimum wage mandates that impact economic stability and growth. The bill provides new definitions for the following terms: “employ,” “employee,” “employer,” “political subdivision,” and “wage mandate.” The term “employer” now explicitly includes “employers that have contracts or subcontracts with a political subdivision or that have received tax abatements, loan guarantees, or other financial assistance from a political subdivision,” which were previously a category of employers and employees that were exempt from state preemption of minimum wage ordinances. “Wage mandate” is a new term added, defined as “any requirement enacted by a political subdivision which requires an employer to pay any or all of its employees a wage rate not otherwise required under state or federal law.”

The bill prohibits political subdivisions from enacting, maintaining, or enforcing any wage mandates in an amount greater than the state minimum wage rate calculated pursuant to s. 24(c), art. X of the Florida Constitution, and provides that any wage mandates in conflict with the state minimum wage are void.

The bill further provides an exception allowing political subdivisions to enact, maintain, or enforce minimum wage requirements or other benefits included in a collective bargaining agreement for employees of the political subdivision. Additionally, there is an exception if federal law requires the payment of a prevailing minimum wage to persons working on projects funded in whole or in part by federal funds.

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<sup>9</sup> S. 218.077(2), F.S.

<sup>10</sup> Defined as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. S. 218.077(1)(f), F.S.

<sup>11</sup> S. 218.077(3)(a), F.S.

<sup>12</sup> S. 218.077(3)(b), F.S.

<sup>13</sup> See, e.g., 40 U.S.C. 3141 *et seq.*

<sup>14</sup> S. 218.077(4), F.S.

<sup>15</sup> Defined as anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits. S. 218.077(1)(d), F.S.

<sup>16</sup> S. 218.077(2), F.S.; However, federally authorized and recognized tribal governments are not prohibited from requiring employment benefits for a person employed within a territory over which the tribe has jurisdiction. S. 218.077(5), F.S.

**B. SECTION DIRECTORY:**

Section 1: Substantially rewords s. 218.077, F.S., providing new definitions, further preempting minimum wage ordinances and requirements for employment benefits, and providing exceptions to the law.

Section 2: Provides an effective date of upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will no longer allow political subdivisions to establish a minimum wage other than a state or federal minimum wage or to require employment benefits not otherwise required under state or federal law from private employers that have contracts or subcontracts with a political subdivision or that have received tax abatements, loan guarantees, or other financial assistance from a political subdivision. This change may lower operating costs for these private employers.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**